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## WISCONSIN ADMINISTRATIVE REGISTER

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## Table of Contents

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**Emergency Rules Now in Effect.****Pages 5 to 10**

Agriculture, Trade and Consumer Protection:

Creates Chapter ATCP 53, relating to agricultural enterprise areas. **EmR1040**Repeals and recreates Chapter ATCP 20, relating to seed labeling and sales. **EmR1048**

Children and Families:

***Safety and Permanence, Chs. DCF 35–59***Creates sections DCF 57.485 and 57.49 (1) (am), relating to determination of need for new group homes. **EmR1034**Repeals Chapter DCF 38 and revises Chapter DCF 56, relating to foster care. **EmR1050**Revise Chapters DCF 52, 54, and 57, relating to regulation of rates charged by residential care centers for children and youth, child–placing agencies, and group homes. **EmR1106**

Commerce:

***Financial Resources for Businesses and Communities, Chs. Comm 100–149***Creates Chapter Comm 103, relating to certification of disabled–veteran–owned businesses, and affecting small businesses. **EmR1041**

Government Accountability Board:

Amends section GAB 1.28, relating to the definition of the term “political purpose.” **EmR1049**

Insurance:

Creates section Ins 3.35, relating to colorectal cancer screening coverage and affecting small business. **EmR1042**Amends section Ins 3.37 (1) to (5) (intro); and creates sections Ins 3.37 (2m), (3m), (4m) and (5m), and 3.375, relating to health insurance coverage of nervous and mental disorders and substance use disorders, and affecting small business. **EmR1043**Revises section Ins 6.07 (4) and (9), relating to readability and electronic access to insurance policies and affecting small business. **EmR1101**

Natural Resources:

***Fish, Game, etc., Chs. NR 1–***Creates section NR 40.02 (2), relating to the identification, classification and control of invasive species. **EmR1036**Creates sections NR 40.02 (7g), (7r), (25m), (28m) and (46m), 40.04 (3m) and 40.07 (8) relating to the identification, classification and control of invasive bat species. **EmR1039**Repeals section NR 40.02 (28m), amends section NR 40.04 (3m), and repeals and recreates section NR 40.07 (8), relating to the identification, classification and control of invasive species. **EmR1045**Amend section NR 25.09 (2) (b) 2. a and f, and create section NR 25.09 (1) (b) 11., relating to commercial fishing in outlying waters. **EmR1107** [*First Appearance*]

***Environmental Protection — Air Pollution Control, Chs. NR 400—***

Revises Chapters NR 400, 405 and 407, relating to major source permitting thresholds for sources of greenhouse gas emissions and affecting small business. **EmR1046**

Public Instruction:

Creates Chapter PI 46, relating to training requirements for individuals administering nonprescription and prescription drug products to pupils. **EmR1051**

Regulation and Licensing:

Creates section RL 91.01 (3) (k), relating to training and proficiency in the use of automated external defibrillators for certification as a massage therapist or bodyworker. **EmR0827**

Creates section RL 180.02 and revises section RL 181.01, relating to training and proficiency in the use of automated external defibrillators for licensure as a licensed midwife. **EmR0828**

Creates Chapters RL 200 to 202, relating to governing professional conduct of individuals licensed as sign language interpreters, and for the treatment of state resident licensure exemption requests. **EmR1102**

Regulation and Licensing — Barbering and Cosmetology Examining Board:

Revises Chapters BC 9 and 11, relating to late renewal and continuing education. **EmR1047**

Regulation and Licensing — Veterinary Examining Board:

Revises sections VE 2.01 (2), 3.03 (intro) and (5), relating to the requirements for the initial licensure of veterinarians, specifically, the procedures for, and the types of examinations required. **EmR1103**

Revenue:

Creates section Tax 2.957, relating to income and franchise tax credits and deductions for businesses that relocate to Wisconsin. **EmR1104**

Creates section Tax 3.05, relating to income and franchise tax deductions for job creation. **EmR1105**

**Scope Statements.****Page 11 to 13**

Commerce:

***Fee Schedule, Ch. Comm 2  
Licenses, Certifications and Registrations, Ch. Comm 5***  
Revises Chapters Comm 2 and 5, relating to fees.

Public Service Commission:

Revises Chapter PSC 160, relating to the review of Universal Service Fund rules.

Regulation and Licensing — Pharmacy Examining Board:

Revises section Phar 7.055, relating to the transfer of individual prescription orders from one pharmacy to another.

Transportation:

Revises Chapter Trans 100 to conform to the minimum mandatory insurance limit requirements set in 2011 Wis. Act 14.

**Rule-Making Notices.****Pages 14 to 17**

Revenue:

Hearing to consider emergency rules and permanent rules creating section Tax 2.957, relating to income and franchise tax credits and deductions for businesses that relocate to Wisconsin. **EmR1104, CR 11-023**

Revenue:	Hearing to consider emergency rules and permanent rules creating section Tax 3.05, relating to income and franchise tax deductions for job creation. <b>EmR1105, CR 11-024</b>
<b>Submittal of Proposed Rules to the Legislature.</b>	<b>Page 18</b>
Children and Families:	<i>Safety and Permanence, Chs. DCF 35-59</i> Repeals Chapter DCF 38 and revises Chapter DCF 56, relating to foster care. <b>CR 10-148</b>
Natural Resources:	<i>Fish, Game, etc., Chs. NR 1-</i> Revises Chapter NR 25, relating to the use and marking of commercial fishing trap nets in Lake Michigan and Lake Superior. <b>CR 11-008</b>  <i>Environmental Protection — Water Supply, Chs. NR 800-</i> Creates Chapter NR 860, relating to the process and procedures for the water use permit program in the Great Lakes basin. <b>CR 10-109</b>
Public Service Commission:	Revises Chapter PSC 168, relating to the certification and operation of alternative telecommunications utility resellers. <b>CR 10-143</b>
Regulation and Licensing — Barbering and Cosmetology Examining Board:	Revises Chapters BC 9 and 11, relating to license renewal and continuing education. <b>CR 11-011</b>
Regulation and Licensing — Chiropractic Examining Board:	Revises Chapter Chir 5, relating to continuing education requirements for chiropractic radiological technicians and chiropractic technicians and to update provisions related to continuing education for chiropractors. <b>CR 11-019</b>
<b>Rule Orders Filed with the Legislative Reference Bureau.</b>	<b>Page 19</b>
Agriculture, Trade and Consumer Protection:	Revises Chapter ATCP 20, relating to seed labeling and sales. <b>CR 10-107</b>
Commerce:	<i>Moveable Soccer Goals, Ch. Comm 9</i> Revises Chapter Comm 9, relating to anchoring and securing of movable soccer goals. <b>CR 11-003</b>
Insurance:	Revises section Ins 3.37 and creates section 3.375, relating to health in insurance coverage of nervous and mental disorders and substance use disorders. <b>CR 10-149</b>  Creates section Ins 3.35, relating to colorectal cancer screening. <b>CR 10-150</b>
<b>Rules Published with this Register and Final Regulatory Flexibility Analyses.</b>	<b>Pages 20 to 23</b>
Agriculture, Trade and Consumer Protection:	Revises Chapter ATCP 16, relating to dog sellers and dog facilities. <b>CR 10-100</b>
Commerce:	<i>Financial Resources for Businesses and Communities, Chs. Comm 100-149</i> Creates Chapter Comm 124, relating to the Forward Innovation Fund. <b>CR 10-044</b>  Revises Chapter Comm 129, relating to tax credits for Angel Investments and Early Stage Seed Investments. <b>CR 10-108</b>

	Creates Chapter Comm 139, relating to rural outsourcing grants. <b>CR 10–113</b>
	Revises Chapter Comm 133, relating to film production accreditation program. <b>CR 10–116</b>
	Creates Chapter Comm 135, relating to investment tax credits for food processing plants and food warehouses. <b>CR 10–117</b>
Financial Institutions — Banking:	Creates Chapter DFI–Bkg 75, relating to payday lending. <b>CR 10–098</b>
Health Services:	<i>Community Services, Chs. DHS 30—</i> Revises Chapter DHS 88, relating to resource center referrals by licensed adult family homes. <b>CR 10–145</b>
	<i>Management and Technology and Strategic Finance, Chs. DHS 1—</i> Revises Chapter DHS 1, relating to records status and retention period for records of clients who have unpaid liability to the Department or counties. <b>CR 10–146</b>
Natural Resources:	<i>Fish, Game, etc., Chs. NR 1—</i> Revises Chapters NR 1 and 45, relating to management of lands for the Ice Age and North Country Trails. <b>CR 10–118</b>
	Revises Chapters NR 27, relating to adding cave bats to Wisconsin’s threatened species list. <b>CR 10–114</b>
	Revises Chapters NR 40, relating to white–nose syndrome management. <b>CR 10–123</b>
	Revises Chapter NR 40, relating to the listing of the fungus that causes white–nose syndrome in bats as an invasive species. <b>CR 10–115</b>
Public Instruction:	Revises section PI 6.06, relating to public library system audit requirements. <b>CR 10–139</b>
	Revises section PI 6.03, relating to public librarian certification. <b>CR 10–140</b>
Transportation:	Revises Chapter Trans 178, relating to the Unified Carrier Registration System. <b>CR 10–099</b>
<b>Sections Affected by Rule Revisions and Corrections.</b>	<b>Pages 24 to 25</b>
<b>Executive Orders.</b>	<b>Page 26</b>

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## Emergency Rules Now in Effect

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*Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule-making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule-making procedures.*

*Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.*

*Occasionally the Legislature grants emergency rule authority to an agency with a longer effective period than 150 days or allows an agency to adopt an emergency rule without requiring a finding of emergency.*

*Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.*

*Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency or a statement of exemption from a finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.*

*Copies of emergency rule orders can be obtained from the promulgating agency. The text of current emergency rules can be viewed at [www.legis.state.wi.us/rsb/code](http://www.legis.state.wi.us/rsb/code).*

*Beginning with rules filed with the Legislative Reference Bureau in 2008, the Legislative Reference Bureau will assign a number to each emergency rule filed, for the purpose of internal tracking and reference. The number will be in the following form: EmR0801. The first 2 digits indicate the year of filing and the last 2 digits indicate the chronological order of filing during the year.*

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### Agriculture, Trade and Consumer Protection (2)

**1. EmR1040** — Rule adopted to create **Chapter ATCP 53**, relating to agricultural enterprise areas.

#### Exemption from Finding of Emergency

Under s. 91.84 (2), the department may use the procedure under s. 227.24 to promulgate a rule designating an agricultural preservation area or modifying or terminating the designation of an agricultural preservation area. Notwithstanding s. 227.24 (1) (c) and (2), a rule promulgated under that subsection remains in effect until the department modifies or repeals the rule. Notwithstanding s. 227.24 (1) (a) and (3), the department is not required to determine that promulgating a rule under that subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under that subsection.

The department views s. 91.84 (2) as authority to adopt permanent rules that shall be published immediately in the Wisconsin Administrative Code.

**Publication Date:** November 9, 2010  
**Effective Dates:** January 1, 2011 until the Department modifies or repeals the rule

**2. EmR1048** — Rule adopted to repeal and recreate **Chapter ATCP 20**, relating to seed labeling and sales.

#### Finding of Emergency

Pursuant to sections 93.07 (1) and 94.45 (6), Stats. This emergency rule is also adopted pursuant to the nonstatutory provision in 2009 Wis. Act 28, section 9103 (3).

2009 Wis. Act 28 repealed outdated seed standards effective January 1, 2011, and authorized DATCP to adopt new standards by rule. A non-statutory provision, contained in section 9103 (3) of Act 28, authorized DATCP to adopt interim rules by the emergency rulemaking procedure under s. 227.24, Stats., without a finding of emergency. Under this non-statutory provision, the interim rules may remain in effect until July 1, 2011 or until the effective date of proposed “permanent” seed rules, whichever date is earlier.

**Publication Date:** January 1, 2011  
**Effective Dates:** January 1, 2011 through July 1, 2011  
**Hearing Date:** January 11, 2011

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### Children and Families (3)

#### *Safety and Permanence, Chs. DCF 37–59*

**1. EmR1034** — Rule adopted to create sections **DCF 57.485 and 57.49 (1) (am)**, relating to determination of need for new group homes.

#### Exemption From Finding of Emergency

Section 14m (b) of 2009 Wisconsin Act 335 provides that the department is not required to provide evidence that promulgating a rule under s. 48.625 (1g), Stats., as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency.

Section 14m (b) also provides that notwithstanding s. 227.24 (1) (c) and (2), Stats., an emergency rule promulgated under s. 48.625 (1g), Stats., remains in effect until the permanent rules promulgated under s. 48.625 (1g), Stats., take effect.

**Publication Date:** September 2, 2010  
**Effective Dates:** September 2, 2010 through the date permanent rules become effective  
**Hearing Date:** October 21, 2010

**2. EmR1050** — Rule adopted to repeal **Chapter DCF 38** and revise **Chapter DCF 56**, relating to foster care.

#### Finding of Emergency

The Department of Children and Families finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of the public peace, health, safety,

or welfare. A statement of facts constituting the emergency is:

In the Child and Family Services Review of Wisconsin's child welfare system this past year, the federal Administration for Children and Families found that Wisconsin is not operating in substantial conformity with a number of federal requirements. In response to this review, the department has submitted a program improvement plan that commits the department to complete implementation of the levels of care system and the child assessment tool throughout the first quarter of 2011. Implementation must begin immediately to meet this deadline and subsequent dependent deadlines in the remaining 2 years of the program improvement plan.

**Publication Date:** January 1, 2011  
**Effective Dates:** January 1, 2011 through May 30, 2011  
**Hearing Date:** February 8, 15, 28, 2011

**3. EmR1106** — Rule adopted to revise **Chapters DCF 52, 54, and 57**, relating to regulation of rates charged by residential care centers for children and youth, child-placing agencies, and group homes.

#### Finding of Emergency

The Department of Children and Families finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

2009 Wisconsin Act 28 directed the department to implement rate regulation effective January 1, 2011. Implementation was delayed and this rule is phasing-in rate regulation at the earliest feasible date.

**Publication Date:** April 18, 2011  
**Effective Dates:** April 18, 2011 through September 16, 2011  
**Hearing Date:** May 18, 2011

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## Commerce

### *Financial Resources for Businesses and Communities, Chs. Comm 100–149*

**1. EmR1041** — Rule adopted creating **Chapter Comm 103**, relating to certification of disabled-veteran-owned businesses, and affecting small businesses.

#### Exemption From Finding of Emergency

The Legislature, by SECTION 101 (1) in 2009 Wisconsin Act 299, exempts the Department from providing evidence that this emergency rule is necessary for the preservation of public peace, health, safety or welfare; and exempts the Department from providing a finding of emergency for the adoption of this rule.

**Publication Date:** November 14, 2010  
**Effective Dates:** November 14, 2010 through April 12, 2011  
**Extension Through:** June 11, 2011  
**Hearing Date:** February 15, 2011

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## Government Accountability Board

**EmR1049** — Rule adopted to amend **section GAB 1.28**, relating to the definition of the term “political purpose.”

#### Finding of Emergency

The Government Accountability Board amends s. GAB 1.28 (3) (b), Wis. Adm. Code, relating to the definition of the term “political purpose.” Section GAB 1.28 as a whole continues to clarify the definition of “political purposes” found in s. 11.01 (16) (a)1., Stats., but repeals the second sentence of s. GAB 1.28 (3) (b) which prescribes communications presumptively susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.

This amendment to s. GAB 1.28 (3) (b) is to the rule that was published on July 31, 2010 and effective on August 1, 2010, following a lengthy two year period of drafting, internal review and study, public comment, Legislative review, and consideration of U.S. Supreme Court decisions. Within the context of ch. 11, Stats, s. GAB 1.28 provides direction to persons intending to engage in activities for political purposes with respect to triggering registering and reporting obligations under campaign financing statutes and regulations. In addition, the rule provides more information for the public so that it may have a more complete understanding as to who is supporting or opposing which candidate or cause and to what extent, whether directly or indirectly.

Pursuant to §227.24, Stats., the Government Accountability Board finds an emergency exists as a result of pending litigation against the Board and two decisions by the United States Supreme Court: *Federal Election Commission (FEC) v. Wisconsin Right to Life, Inc. (WRTL II)*, 550 U.S. 549 (2007) and *Citizens United v. FEC*, 558 U.S. \_\_\_, (No. 08–205) (January 21, 2010). Following the effective date of the August 1, 2010 rule, three lawsuits were filed seeking a declaration that the rule was unconstitutional and beyond the Board's statutory authority: one in the U.S. District Court for the Western District of Wisconsin, one in the U.S. District Court for the Eastern District of Wisconsin, and one in the Wisconsin Supreme Court. On August 13, 2010, the Wisconsin Supreme Court temporarily enjoined enforcement of the August 1, 2010 rule, pending further order by the Court.

In the lawsuit in the U.S. District Court for the Western District of Wisconsin, the parties previously executed a joint stipulation asking the Court to permanently enjoin application and enforcement of the second sentence of s. GAB 1.28 (3) (b). On October 13, 2010, the Court issued an Opinion and Order denying that injunction request. In denying the injunction, the Court noted that “G.A.B. has within its own power the ability to refrain from enforcing, or removing altogether, the offending sentence from a regulation G.A.B. itself created” and emphasized that “removing the language — for example, by G.A.B. issuing an emergency rule — would be far more ‘simple and expeditious’ than asking a federal court to permanently enjoin enforcement of the offending regulation.” *Wisconsin Club for Growth, Inc. v. Myse*, No. 10–CV–427, slip op. at 2 (W.D. Wis. Oct. 13, 2010). The Court further noted that staying the case would give the Board time to resolve some or all of the pending issues through further rulemaking. *Id.*, slip op. at 14.

In addition, the Board, through its litigation counsel, has represented to the Wisconsin Supreme Court that it does not intend to defend the validity of the second sentence of s. GAB 1.28 (3) (b) and that it would stipulate to the entry of an order

by that Court permanently enjoining the application or enforcement of that sentence.

This amendment brings s. GAB 1.28 (3) (b) into conformity with the above stipulation, with the representations that have been made to the Wisconsin Supreme Court, and with the suggestions made in the October 13, 2010, Opinion and Order of the U.S. District Court for the Western District of Wisconsin. The Board finds that the immediate adoption of this amendment will preserve the public peace and welfare by providing a simple and expeditious clarification of the meaning of s. GAB 1.28 for litigants, for the regulated community, and for the general public and by doing so in advance of the 2011 Spring Election and any other future elections.

**Publication Date:** January 7, 2011  
**Effective Dates:** January 7, 2011 through June 5, 2011  
**Hearing Date:** February 16, 2011

### Insurance (3)

**1. EmR1042** — Rule to create **section Ins 3.35**, relating to colorectal cancer screening coverage and affecting small business.

#### Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

Beginning December 1, insurers offering disability insurance policies and self-insured governmental plans are required to offer coverage for colorectal cancer screening. In order to ensure there is no gap in coverage the office needs to promulgate guidance as directed s. 632.895 (16m) (d), Stats., in advance of the initial implementation date.

**Publication Date:** November 29, 2010  
**Effective Dates:** November 29, 2010 through April 27, 2011  
**Extension Through:** June 26, 2011  
**Hearing Date:** January 25, 2011

**2. EmR1043** — Rule to amend **section Ins 3.37 (1) to (5) (intro)**; and to create **sections Ins 3.37 (2m), (3m), (4m) and (5m), and 3.375**, relating to health insurance coverage of nervous and mental disorders and substance use disorders, and affecting small business.

#### Exemption From Finding of Emergency

The legislature by s. 632.89 (4) (b) 2., Stats., provides an exemption from a finding of emergency for adoption of the rule. Section 632.89 (4) (b) 2., Stats., reads as follows:

632.89 (4) (b) 2. Using the procedure under s. 227.24, the commissioner may promulgate the rules under subd. 1., for the period before the effective date of any permanent rules promulgated under subd.1., but not to exceed the period authorized under 227.24 (1) (c) and (2). Notwithstanding s. 227.24 (1) (a), (2) (b), and (3), the commissioner is not required to provide evidence that promulgating a rule under this subdivision as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to make a finding of emergency for a rule promulgated under this subdivision.

**Publication Date:** November 29, 2010  
**Effective Dates:** November 29, 2010 through April 27, 2011  
**Extension Through:** June 26, 2011  
**Hearing Date:** January 25, 2011

**3. EmR1101** — Rule adopted to revise **section Ins 6.07 (4) and (9)**, relating to readability and electronic access to insurance policies and affecting small business.

#### Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows: the cost of implementing the Flesch scores and electronic access to policies significantly exceeded anticipated costs for the insurance industry; a review of state resources indicates insufficient staff to timely review the volume of health insurance policy filings resulting from the flesch score requirement; and it is anticipated the federal department of Health and Human Services (“HHS”) will use National Association of Insurance Commissioners recommendations for the development of standards for a uniform summary of benefits and coverage explanation for all potential policyholders and enrollees. Repealing these provisions now before costly system overhauls will save both the industry and the state significant resources. Further, although it was anticipated that the National Association of Insurance Commissioners was planning to implement a national readability standard, such movement has stalled negating the amendment to prior Flesch readability scores.

The changes contained in this emergency rule will restore prior standards and ease financial constraints for the insurance industry.

**Publication Date:** February 9, 2011  
**Effective Dates:** February 9, 2011 through July 8, 2011  
**Hearing Date:** May 3, 2011

### Natural Resources (4)

#### *Fish, Game, etc., Chs. NR 1—*

**1. EmR1036** — Rule adopted to create **section NR 40.04 (2) (g)** relating to the identification, classification and control of invasive species.

#### Exemption From Finding of Emergency

Section 227.24 (1) (a), Stats., authorizes state agencies to promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under ch. 227, Stats., if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures. However, s. 23.22 (2t) (a), Stats., authorizes the department to promulgate emergency rules to identify, classify, or control an invasive species without having to provide evidence that an emergency rule is necessary for the preservation of public peace, health, safety, or welfare or to provide a finding of emergency. **In addition, such emergency rules may remain in effect until whichever of the following occurs first: the first day of the 25th month beginning after the effective date of the emergency rule, the effective date of the repeal of the emergency rule, or the date on which the permanent rule identifying, classifying, or controlling the invasive species, promulgated under s. 23.22 (2) (b) 6., Stats., takes effect.**

**Publication Date:** September 29, 2010  
**Effective Dates:** September 29, 2010 through  
*See bold text above*  
**Hearing Date:** October 25 to 29, 2010

**2. EmR1039** (DNR # IS-49-10(E)) — Rule adopted to create sections NR 40.02 (7g), (7r), (25m), (28m) and (46m), 40.04 (3m) and 40.07 (8) relating to the identification, classification and control of invasive bat species.

#### Exemption From Finding of Emergency

Section 227.24 (1) (a), Stats., authorizes state agencies to promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under ch. 227, Stats., if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures. However, s. 23.22 (2t) (a), Stats., authorizes the department to promulgate emergency rules to identify, classify, or control an invasive species without having to provide evidence that an emergency rule is necessary for the preservation of public peace, health, safety, or welfare or to provide a finding of emergency. **In addition, such emergency rules may remain in effect until whichever of the following occurs first: the first day of the 25th month beginning after the effective date of the emergency rule, the effective date of the repeal of the emergency rule, or the date on which the permanent rule identifying, classifying, or controlling the invasive species, promulgated under s. 23.22 (2) (b) 6., Stats., takes effect.**

**Publication Date:** November 3, 2010  
**Effective Dates:** November 3, 2010 through  
*See bold text above*  
**Hearing Date:** November 29, 2010

**3. EmR1045** (DNR # IS-07-11(E)) — Rule to repeal section NR 40.02 (28m); to amend section NR 40.04 (3m), and to repeal and recreate section NR 40.07 (8), (all as created by Natural Resource Board emergency order EmR1039, DNR # IS-49-10(E)), relating to the identification, classification and control of invasive species.

#### Exemption From Finding of Emergency

Section 227.24 (1) (a), Stats., authorizes state agencies to promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under ch. 227, Stats., if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures. However, s. 23.22 (2t) (a), Stats., authorizes the department to promulgate emergency rules to identify, classify, or control an invasive species without having to provide evidence that an emergency rule is necessary for the preservation of public peace, health, safety, or welfare or to provide a finding of emergency. **In addition, such emergency rules may remain in effect until whichever of the following occurs first: the first day of the 25th month beginning after the effective date of the emergency rule, the effective date of the repeal of the emergency rule, or the date on which the permanent rule identifying, classifying, or controlling the invasive species, promulgated under s. 23.22 (2) (b) 6., Stats., takes effect.**

**Publication Date:** December 13, 2010  
**Effective Dates:** December 13, 2010 through  
*See bold text above*

**4. EmR1107** — Rule to amend section NR 25.09 (2) (b) 2. a and f, and create section NR 25.09 (1) (b) 11., relating to commercial fishing in outlying waters.

#### Finding of Emergency

The Department of Natural Resources finds that an emergency exists and the foregoing rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is: Commercial trap nets in Lake Michigan pose a hazard to the safety of recreational fishermen trolling submerged fishing lines. The preservation of public safety requires appropriate measures to assure that recreational boaters can know the location of trap nets and are able to release themselves from entanglement with the commercial nets. Accordingly, this NRB Order requires that 1) boat operators engaged in trolling with downriggers carry wire cutters on board capable of severing fishing line or downrigger cable, 2) the enhanced net marking requirements on Lake Michigan be applied to trap nets on Lake Superior, 3) all parts of trap nets set in Zone 3 of Lake Michigan between June 29 and Labor Day be within designated areas, and 4) the marking of trap nets in Lake Michigan be enhanced by the use of reflective tape on buoy staffs.

**Publication Date:** May 31, 2011  
**Effective Dates:** May 23, 2011 through  
 October 20, 2011

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### Natural Resources

#### *Environmental Protection — Air Pollution Control, Chs. NR 400—*

**EmR1046** (DNR # AM-48-10(E)) — The Wisconsin Natural Resources Board proposes an emergency order to amend section NR 407.02 (4) (b) (intro.), and Table 3 in 407.05 (5) and to create sections NR 400.02 (74m), 400.03 (3) (om), and (4) (go) and (ki), 405.02 (28m), 405.07 (9), 407.02 (8m) and 407.075, relating to major source permitting thresholds for sources of greenhouse gas emissions and affecting small business.

#### Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. Preservation of the public welfare necessitates putting the forgoing rules into effect prior to the time that it would take if the Department complied with normal procedures.

On April 1, 2010, the U.S. EPA promulgated the first emission standard for gases contributing to climate change, i.e., greenhouse gases or GHG, which will become effective on January 2, 2011. While these standards target automobile emissions, under the Clean Air Act, this action will unintentionally subject stationary sources across the country to complex prevention of significant deterioration (PSD) and Title V permitting and emission control requirements. U.S. EPA attempted to mitigate this unintended effect by promulgating additional rules, which became effective on June 3, 2010, limiting applicability of the permitting requirements. However, Wisconsin sources will not be affected by the new U.S. EPA rules since existing state statute and administrative code do not contain the same applicability limiting provisions. State rules consistent with those at the federal level must be in effect on January 2, 2011 in order to provide the relief U.S. EPA intended for Wisconsin sources. Without these proposed emergency rules, many sources, including municipal landfills, hospitals, asphalt plants, wastewater treatment plants, small wood fired boilers and

agricultural digesters, will be considered major emissions sources of GHG, and therefore subject to the permit and emission control requirements for GHG. These permit and control requirements were never intended or designed to address the type or size of sources that could now be affected. Without the proposed changes, the existing rules would have the potential to overwhelm DNR permitting staff, divert resources away from significant environmental issues, and delay issuance of construction permits for critical projects for expanding businesses.

Therefore, the Department finds that the proposed emergency rules are necessary and appropriate for the preservation of the public welfare.

**Publication Date:** December 15, 2010  
**Effective Dates:** December 15, 2010 through May 15, 2011  
**Extension Through:** July 13, 2011  
**Hearing Date:** January 21, 2011

### Public Instruction

**EmR1051** — Rule adopted to create **Chapter PI 46**, relating to training requirements for individuals administering nonprescription and prescription drug products to pupils.

#### Finding of Emergency

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

Section 118.29 (6), Stats., requires the department to approve training in administering nonprescription drug products and prescription drugs. The statute also specifies that no school bus driver, employee, or volunteer may administer a nonprescription drug product or prescription drug, use an epinephrine auto-injector, or administer glucagon unless he or she has received such training. Because the statutory requirement becomes effective March 1, 2011, administrative rules must be in place as soon as possible so that training programs can be established prior to the effective date of the statutes.

**Publication Date:** December 28, 2010  
**Effective Dates:** December 28, 2010 through May 26, 2011  
**Hearing Date:** January 12, 2011

### Regulation and Licensing (3)

**1. EmR0827** — Rule adopted creating **section RL 91.01 (3) (k)**, relating to training and proficiency in the use of automated external defibrillators for certification as a massage therapist or bodyworker.

#### Exemption From Finding of Emergency

Section 41 (2) (b) of the nonstatutory provisions of 2007 Wisconsin Act 104 provides that notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of regulation and licensing is not required to provide evidence that promulgating a rule as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated to implement 2007 Wisconsin Act 104.

Notwithstanding s. 227.24 (1) (c) and (2) of the statutes, these emergency rules will remain in effect until the date on which the final rules take effect.

**Publication Date:** September 10, 2008  
**Effective Dates:** September 10, 2008 through the date on which the final rules take effect  
**Hearing Date:** November 26, 2008  
 April 13, 2009

**2. EmR0828** — Rules adopted to amend **section RL 181.01 (2) (c)**; and to create **sections RL 180.02 (1m), (3m) and (11), 181.01 (1) (d), (2) (c) 1. and 2.**, relating to training and proficiency in the use of automated external defibrillators for licensure as a licensed midwife.

#### Exemption From Finding of Emergency

Section 41 (2) (b) of the nonstatutory provisions of 2007 Wisconsin Act 104 provides that notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of regulation and licensing is not required to provide evidence that promulgating a rule as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated to implement 2007 Wisconsin Act 104. Notwithstanding s. 227.24 (1) (c) and (2) of the statutes, these emergency rules will remain in effect until the date on which the final rules take effect.

**Publication Date:** September 10, 2008  
**Effective Dates:** September 10, 2008 through the date on which the final rules take effect  
**Hearing Date:** November 26, 2008

**3. EmR1102** — Rule adopted creating **Chapters RL 200 to 202**, relating to governing professional conduct of individuals licensed as sign language interpreters, and for the treatment of state resident licensure exemption requests.

#### Finding of Emergency

2009 Wisconsin Act 360 created laws regulating the practice of sign language interpreting, and became effective on December 1, 2010. Under the act, codified at s. 440.032, Stats., individuals practicing as sign language interpreters must now be licensed by the department, and must comply with a code of professional conduct to be promulgated by the department. The new law also provides for exemptions from the licensure requirement under certain circumstances, and requires the council to promulgate rules establishing the criteria and procedures for granting state resident exemptions. As s. 440.032, Stats., is already in effect, an emergency rule is necessary to implement the law pending promulgation of a similar permanent rule.

**Publication Date:** March 16, 2011  
**Effective Dates:** March 16, 2011 through August 12, 2011  
**Hearing Date:** May 3, 2011

### Regulation and Licensing — Barbering and Cosmetology Examining Board

**EmR1047** — Rule adopted to revise **Chapters BC 9 and 11**, relating to late renewal and continuing education.

**Finding of Emergency**

The rule as currently promulgated fails to adequately protect the public to the extent that several provisions are underdeveloped, ambiguous or silent. As a result, inconsistent interpretations and contradictory information has led to significant confusion within the profession. Given that the rules require licensees to comply by March 31, 2011, the errors and omissions need to be addressed immediately so licensees can receive adequate training to provide safe and competent services to the public, and comply with the requirements for renewal of a license.

**Publication Date:** December 23, 2010  
**Effective Dates:** December 23, 2010 through May 21, 2011  
**Extension Through:** July 20, 2011  
**Hearing Date:** April 4, 2011

**Regulation and Licensing —  
 Veterinary Examining Board**

**EmR1103** — Rule adopted to revise sections **VE 2.01 (2), 3.03 (intro) and (5)**, relating to the requirements for the initial licensure of veterinarians, specifically, the procedures for, and the types of examinations required.

**Finding of Emergency**

As currently written, the veterinary examining board rules regarding licensure candidates' deadlines for submission of applications to take the North American Veterinary Licensing Examination (NAVLE) do not align with the deadlines established by the National Board of Veterinary Medical Examiners (NBVME). The rules thus also conflict with the deadlines defined in the board's NBVME NAVLE agreement. The rules state that a candidate shall file a completed NAVLE application with the board at least 60 days prior to the date of the scheduled examination. However, NAVLE's deadlines require submission of applications approximately 115 days ahead of the examination date. This inconsistency between the rules and NAVLE's deadlines will likely cause significant confusion for licensure candidates. At worst, it could preclude a candidate from taking the particular NAVLE he or she applies for due to missing the application deadline. In addition, recently-passed legislation now allows foreign veterinary graduates to show evidence of successful completion of the Program for the Assessment of Veterinary Education Equivalence (PAVE) as an alternative to the American Veterinary Medical Association (AMVA) Educational Commission for Foreign Veterinary Graduates Certification (ECFVGC) program. The board adopts this emergency rule effecting the necessary changes pending the promulgation of a similar permanent rule.

**Publication Date:** March 28, 2011  
**Effective Dates:** March 28, 2011 through August 24, 2011  
**Hearing Date:** May 25, 2011

**Revenue (2)**

**1. EmR1104** — Rule adopted creating section **Tax 2.957**, relating to income and franchise tax credits and deductions for businesses that relocate to Wisconsin.

**Finding of Emergency**

The Department of Revenue finds that an emergency exists and that the attached rule order is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

The emergency rule is to reflect changes in Wisconsin's tax laws due to the creation of income and franchise tax credits and deductions for businesses that relocate to Wisconsin.

It is necessary to promulgate this rule order so that these credits and deductions, created to help bring much needed jobs to Wisconsin, may be administered in a fair and consistent manner.

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state newspaper. Certified copies of this rule have been filed with the Legislative Reference Bureau, as provided in s. 227.24, Stats.

**Publication Date:** April 7, 2011  
**Effective Dates:** April 7, 2011 through September 3, 2011  
**Hearing Date:** June 14, 2011

(See the Notice in this Register)

**2. EmR1105** — Rule adopted creating section **Tax 3.05**, relating to income and franchise tax deductions for job creation.

**Finding of Emergency**

The Department of Revenue finds that an emergency exists and that the attached rule order is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

The emergency rule is to reflect changes in Wisconsin's tax laws due to the creation of income and franchise tax deductions for job creation.

It is necessary to promulgate this rule order so that these deductions, created to help bring much needed jobs to Wisconsin, may be administered in a fair and consistent manner.

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state newspaper. Certified copies of this rule have been filed with the Legislative Reference Bureau, as provided in s. 227.24, Stats.

**Publication Date:** April 7, 2011  
**Effective Dates:** April 7, 2011 through September 3, 2011  
**Hearing Date:** June 14, 2011

(See the Notice in this Register)

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## Scope Statements

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### Commerce

#### *Fee Schedule, Ch. Comm 2*

#### *Licenses, Certifications and Registrations, Ch. Comm 5*

#### Subject

Revises Chapters Comm 2 and 5, relating to fees.

#### Objective of the Rule

The objective of the rule is to update the provisions of the Department's administrative rules relating to the fees charged by the Safety and Buildings Division for its services. The update is intended to provide a sufficient revenue stream to cover the operational costs of the division for four years. The objectives of this rule project may be incorporated into more than one rule package and may include revisions to other chapters affected by the proposal.

#### Policy Analysis

Section 101.19, Stats., requires the Department to fix and collect fees by rule which shall, as closely as possible, equal the cost of providing services such as plan examination, inspections, and permits to operate. The fees for these services provided by the Safety and Buildings Division are contained in chapter Comm 2. The fees involved in the issuance of licenses, certifications and registrations are contained in chapter Comm 5. The current fees were last revised in 2008. The alternative of not updating the fees would result in revenues that would not be sufficient to support continuation of existing division operations.

#### Statutory Authority

The statutory authority for the rule is contained in sections 101.19, 145.02 (3) (g), and 145.26 (3), Stats.

#### Comparison with Federal Regulations

An Internet-based search in the *Code of Federal Regulations* and the *Federal Register* did not identify any existing or proposed federal regulations that address these topics.

#### Entities Affected by the Rule

The rule will potentially affect a wide variety of individuals and entities that utilize the Safety and Building Division's services. The Division is involved in the oversight of commercial buildings, new one- and 2- family dwellings, blasting, amusement rides, fireworks manufacturers, boilers, electric wiring, plumbing, public swimming pools, private onsite wastewater treatment systems, passenger ropeways, elevators, escalators, mines, pits and quarries. The people affected by the rule would include building owners, designers and contractors and owners of the various mechanical devices. Under chapter Comm 5 the division issues licenses, certifications and registrations to approximately 70 different types of trade practices typically related to building construction. For example, the Division issues credentials to blasters, electricians, elevator mechanics, plumbers, automatic fire sprinkler installers and inspectors.

#### Estimate of Time Needed to Develop the Rule

The department estimates approximately 300 hours will be needed to perform the review and develop any needed rule changes. This time includes drafting the rule changes and processing the changes through public hearings, legislative review, and adoption. The department will assign existing staff to perform the review and develop the rule changes, and no other resources will be needed.

### Public Service Commission

(PSC # 1-AC-236)

#### Subject

Revises Chapter PSC 160, relating to the review of Universal Service Fund rules.

#### Objective of the Rule

The objective of this rulemaking is to revise the existing chapter PSC 160, Universal Service Support Funding and Programs. These rules were originally created in 1996, and then revised in 2000. Minor changes are also made to chs. PSC 161, 165, and 171. In the proposed rule, the commission revises existing Universal Service programs that provide access to telecommunications service to all Wisconsin customers regardless of geographic location, income or disability, and to assist in the deployment of advanced services in all areas of the state. In this same chapter are revisions to the mechanism for funding those programs and for administering the Universal Service Fund (USF).

Any changes made as a result of this rulemaking would be intended to continue and enhance support for the general purposes stated in the statutes.

A prior USF rulemaking was withdrawn by act of law on December 31, 2010. There were issues that were contentious and time for promulgation ran out. This rulemaking is primarily intended to promulgate those portions of the previously proposed rule that are less contentious, such as program-specific updates.

While the rulemaking will primarily affect the administrative rule shown above, it may also require amendments in other rule chapters to, for example, maintain consistency among rules.

#### Policy Analysis

Universal service definitions, the administration of the USF (assessments, an administrator, and a Universal Service Fund Council), and universal service programs intended to address needs including those of low-income customers, customers in high-cost areas, and customers with disabilities, are specified in ch. PSC 160.

As recognized in the initial USF legislation, universal service is a dynamic issue. The commission will consider changes to the rules to reflect changing circumstances that may be identified throughout the rulemaking process. While all the specifics will not be known until the review of the existing rules is underway, this rulemaking will look at modifications, additions, and improvements to the rules to make administration more efficient and to make program operations more effective given experience to date.

A prior USF rulemaking was withdrawn by act of law on December 31, 2010. There were issues that were contentious and time for promulgation ran out. This rulemaking is primarily intended to promulgate those portions of the previously proposed rule that are less contentious, such as program specific updates. Changes to be considered in this new rulemaking will not address matters related to deployment of data service capabilities (data transmission speed) or substantive modifications related to FCC guidelines on Eligible Telecommunications Carrier qualifications and filing requirements. These were the most contentious of the issues in the earlier, now closed rulemaking. The primary changes to be addressed in this new rulemaking are aimed at administrative efficiencies and improvements of programmatic operations.

### Statutory Authority

This rulemaking is authorized under ss. 196.02 (3), 196.218 (4), (5) (b) and (5m) and 227.11 (2), Stats.

### Estimate of Time Needed to Develop the Rule

The commission estimates that approximately 300 hours of commission staff time will be required in this rulemaking. The commission will work with the Universal Service Fund Council as the proposed rule is developed.

### Entities Affected by the Rule

All telecommunications providers may be affected by changes to this rule.

### Comparison with Federal Regulations

There is both a state USF and a federal USF. The state and federal funds and programs are complementary rather than duplicative.

“Eligible Telecommunications Carriers” (ETCs) are designated by the commission and are, thereafter, eligible for funding from the federal USF and for certain funding from the state USF. ETC status was created by the FCC, and codified in 47 U.S.C. § 214 (e) (2). Under FCC rules, state commissions are responsible for designating eligible providers as ETCs<sup>1</sup>.

Designation as an ETC is required if a provider is to receive federal USF funding. ETC designation is also required to receive funding from some, but not all, state universal service programs. The FCC established a set of minimum criteria that all ETCs must meet. These are codified in the federal rules<sup>2</sup>. The 1996 Telecommunications Act states that, “A State may adopt regulations not inconsistent with the Commission’s rules to preserve and advance universal service.”<sup>3</sup> A court upheld the states’ right to impose additional conditions on ETCs in *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 418 (5th Cir. 1999). Therefore, while states must examine the federal requirements, they are allowed to create additional requirements. Wisconsin has done so.

The federal USF provides funding to ETCs that are found to serve high-cost areas. That funding is to be used to help cover the costs of expanding infrastructure into those areas. Doing so should help ensure that rates in those areas stay lower since rates need not provide the funds for that expansion. The Wisconsin USF provides reimbursement to providers that offer credits to customers when rates are higher than as designated in s. PSC 160.09.

The federal USF also includes Lifeline and Link-Up programs to assist low-income customers. The Wisconsin Lifeline and Link-Up programs are structured to complement

the federal program and to take advantage of the available federal Lifeline and Link-Up funds.

The federal USF assessment applies to all carriers, including wireless carriers, and is assessed based on interstate revenues. The state USF assessment applies to all providers, including wireless providers, and is assessed based on intrastate revenues. Wisconsin exempts certain providers from assessment, such as those with under \$200,000 in intrastate revenues.

There are parts of the federal USF (e.g., the E-Rate program for schools) that do not have a counterpart in the state USF rules. Likewise, some of the state USF rules (e.g., the program to assist persons with disabilities – s. PSC 160.071) address matters not included in the federal USF law or rules.

<sup>1</sup> 47 U.S.C. § 214(e)(2), 47 C.F.R. § 54.201(b).

<sup>2</sup> 47 U.S.C. § 214(e)(1), 47 C.F.R. § 54.101(a).

<sup>3</sup> 47 U.S.C. § 254(f).

## Regulation and Licensing — Pharmacy Examining Board

### Subject

Revises section Phar 7.055, relating to the transfer of individual prescription orders from one pharmacy to another.

### Objective of the Rule

To allow pharmacists licensed in Wisconsin to delegate the function of transferring prescriptions to pharmacy interns to the extent permissible under federal law.

### Policy Analysis

The administrative rules in Wisconsin regarding the transfer of prescription orders from one pharmacy to another currently specify that all such transfers must be communicated between two licensed pharmacists only. However, the federal law applies that requirement to the transfer of prescriptions for controlled substances only. The proposed amendment to Wis. Admin. Code § 7.055, would repeal application of the pharmacist-to-pharmacist only prescription transfer requirement for prescription drugs that are not scheduled controlled substances.

### Statutory Authority

Sections 15.08 (5) (b), 227.11, 450.02 (2), (3) (a), Stats.

### Comparison with Federal Regulations

The federal law on prescription transfers is located at 21 C.F.R. s. 1306.25. Section 1306.25, 21 C.F.R. governs the transfer of prescriptions for Schedules III, IV, and V controlled substances<sup>1</sup>, and provides that such transfers may be for refill purposes only, and that they must be communicated between two licensed pharmacists only. No federal law on the transfer of prescriptions for non-scheduled drugs exists.

### Entities Affected by the Rule

Licensed pharmacists that will be able to delegate the prescription transfer function to their pharmacist interns, and pharmacy interns.

### Estimate of Time Needed to Develop the Rule

120 hours.

<sup>1</sup>Schedule I controlled substances have no currently accepted medical use in treatment in the United States; Schedule II substances cannot be refilled.

## Transportation

### Subject

Revises Chapter Trans 100 to conform to the minimum mandatory insurance limit requirements set in 2011 Wis. Act 14.

### Objective of the Rule

2009 Wis. Act 28 created a mandatory insurance law in Wisconsin and set the minimum insurance requirements at \$15,000, \$50,000 and \$100,000 for property damage, injury to a person, and injuries to multiple persons in an accident respectively. Wis. Stat. ss. 344.26 (3) and 344.01 (2) (am) and (d). After November 1, 2011, the minimum mandatory insurance amounts drop to \$10,000, \$25,000 and \$50,000. Wis. Stat. ss. 344.26 (3) and 344.01 (2) (d) as amended by 2011 Wis. Act 14 s. 4.

2009 Wis. Act 28 also provided for regular adjustments to those minimum mandatory insurance limits through an indexing system tied to the consumer price index. 2011 Wisconsin Act 14 repealed that indexing mechanism.

Current Ch. Trans 100 reflects the minimum mandatory limit amounts established under 2009 Wis. Act 28 and the

indexing system for adjustments to those limits. This rulemaking will repeal references to the indexing system and amend the minimum mandatory insurance limits to match those set by 2011 Wis. Act 14.

### Policy Analysis

This regulatory change involves no policy decisions by the Department of Transportation. This rulemaking will simply amend the existing administrative rule to conform to the new statutory requirements imposed by 2011 Wis. Act 14.

### Comparison with Federal Regulations

None.

### Entities Affected by the Rule

Insurance companies and insured persons.

### Statutory Authority

Sections 85.16 (1), 227.11, and 343.02, Stats.

### Estimate of Time Needed to Develop the Rule

40 hours.

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## Rule-Making Notices

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### Notice of Hearing

#### Revenue

#### EmR1104, CR 11-023

NOTICE IS HEREBY GIVEN that, pursuant to sections 71.05 (6) (b) 47. e., 71.28 (9s) (d) 2., and 71.47 (9s) (d) 2., Stats., the Department of Revenue will hold a public hearing to consider emergency rules and permanent rules creating section Tax 2.957, relating to income and franchise tax credits and deductions for businesses that relocate to Wisconsin.

#### Hearing Information

The hearing will be held:

<u>Date and Time</u>	<u>Location</u>
<b>June 14, 2011</b>	Events Room
Tuesday	State Revenue Building
at 9:00 A.M.	2135 Rimrock Road
	Madison, WI 53713

Handicap access is available at the hearing location.

#### Appearances at the Hearing and Submittal of Written Comments

Interested persons are invited to appear at the hearing and may make an oral presentation. It is requested that written comments reflecting the oral presentation be given to the department at the hearing. Written comments may also be submitted to the contact person listed below no later than **June 21, 2011**, and will be given the same consideration as testimony presented at the hearing.

Dale Kleven  
 Department of Revenue  
 Mail Stop 6-40  
 2135 Rimrock Road  
 P.O. Box 8933  
 Madison, WI 53708-8933

#### Analysis Prepared by the Department of Revenue

##### *Statute(s) interpreted*

Sections 71.05 (6) (b) 47., 71.28 (9s), and 71.47 (9s), Stats.

##### *Statutory authority*

Sections 71.05 (6) (b) 47. e., 71.28 (9s) (d) 2., 71.47 (9s) (d) 2., and 227.24, Stats.

##### *Explanation of agency authority*

Sections 71.05 (6) (b) 47. e., 71.28 (9s) (d) 2., and 71.47 (9s) (d) 2., Stats., require the department to promulgate rules to administer the income and franchise tax credits and deductions created by 2011 Wisconsin Act 3 for businesses that relocate to Wisconsin.

##### *Related statute or rule*

There are no other applicable statutes or rules.

##### *Plain language analysis*

This proposed rule prescribes the method by which the percentage of the workforce payroll of a business and the dollar amount of wages paid to such workforce moved to this

state during a taxable year shall be determined for purposes of ss. 71.05 (6) (b) 47., 71.28 (9s), and 71.47 (9s), Stats. It also provides examples of actions that may indicate a business has relocated to this state from another state or country and limits the deduction provided for in s. 71.05 (6) (b) 47. am., b., and c., Stats.

##### *Summary of, and comparison with, existing or proposed federal regulation*

There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule.

##### *Comparison with similar rules in adjacent states*

The department has researched provisions in adjacent states and is not aware of the existence of a similar rule.

##### *Summary of factual data and analytical methodologies*

2011 Wisconsin Act 3 created income and franchise tax credits and deductions for businesses that relocate to Wisconsin. Among the provisions created is a requirement for the department to promulgate rules to administer these credits and deductions. The department has created this proposed rule order to comply with this statutory requirement.

##### *Analysis and supporting documents used to determine effect on small business*

As explained above, this proposed rule is created to administer changes in Wisconsin's income and franchise tax laws. As the rule itself does not impose any significant financial or other compliance burden, the department has determined that it does not have a significant effect on small business.

##### **Effect on Small Business**

This proposed rule does not have a significant effect on small business.

##### **Fiscal Estimate**

##### *Assumptions used in arriving at fiscal estimate*

The proposed rule prescribes the method by which the percent of the workforce payroll of a business and the dollar amount of wages paid to such workforce moved to this state during a taxable year shall be determined for purposes of ss. 71.05 (6) (b) 47. a., 71.28 (9s) (a) 2., and 71.47 (9s) (a) 2., Stats., as created by 2011 Wisconsin Act 3.

The fiscal effect of income and franchise tax credit and deduction for businesses that relocate to Wisconsin from another state or country was included in the fiscal estimate for 2011 Act 3. As such, the proposed rule has no fiscal effect.

##### *State fiscal effect*

No state fiscal effect.

##### *Local government fiscal effect*

No local government costs.

##### *Anticipated costs incurred by private sector*

This proposed rule does not have a significant fiscal effect on the private sector.

### Agency Contact Person

Please contact Dale Kleven at (608) 266-8253 or [dale.kleven@revenue.wi.gov](mailto:dale.kleven@revenue.wi.gov), if you have any questions regarding this proposed rule.

### Text of Rule

**SECTION 1.** Tax 2.957 is created to read:

**Tax 2.957 Relocated business credit or deduction. (1) PURPOSE.** The purpose of this section is to prescribe the method by which the percentage of the workforce payroll of a business and the dollar amount of wages paid to such workforce moved to this state during a taxable year shall be determined for purposes of ss. 71.05 (6) (b) 47., 71.28 (9s), and 71.47 (9s), Stats.; provide examples of actions that may indicate a business has relocated to this state from another state or country; and limit the deduction provided for in s. 71.05 (6) (b) 47. am., b., and c., Stats.

**(2) DEFINITIONS.** In this section:

(a) "Business" means any organization or enterprise operated for profit, including a sole proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation, limited liability company, or association.

(b) "Doing business in this state" has the meaning given in s. 71.22 (1r), Stats.

(c) "Employee" has the meaning given in section 3121 (d) of the Internal Revenue Code.

(d) "Taxable year" has the meaning given in ss. 71.01 (12), 71.22 (10), and 71.42 (5), Stats.

(e) "Wages" has the meaning given in section 3121 (a) of the Internal Revenue Code.

**(3) RELOCATION TO THIS STATE.** For purposes of ss. 71.05 (6) (b) 47., 71.28 (9s), and 71.47 (9s), Stats., actions that may indicate a business has relocated to this state from another state or country include the following:

(a) Registering with the department, as provided in s. 73.03 (50), Stats.

(b) Registering to do business in Wisconsin with the department of financial institutions.

**(4) DOING BUSINESS IN THIS STATE.** For purposes of ss. 71.05 (6) (b) 47., 71.28 (9s), and 71.47 (9s), Stats., doing business in this state for any portion of a taxable year means doing business in this state for the entire taxable year, as provided in s. 71.22 (1r), Stats.

**(5) WORKFORCE PAYROLL.** For purposes of ss. 71.05 (6) (b) 47. a., 71.28 (9s) (a) 2., and 71.47 (9s) (a) 2., Stats., the determination as to whether 51% or more of the workforce payroll of a business has moved to this state during a taxable year shall be made using a fraction, the numerator of which is the total amount of wages paid by the business during the taxable year to employees of the business who are residents of this state, and the denominator of which is the total amount of wages paid by the business during the taxable year to all employees of the business.

**Example:** During the taxable year in which Business A begins doing business in Wisconsin, Business A pays \$6,000,000 of wages to employees of Business A who are residents of Wisconsin and \$10,000,000 of total wages to all employees of Business A. Sixty (60) percent of the workforce payroll of Business A moved to Wisconsin during the taxable year (6,000,000/10,000,000).

**(6) WORKFORCE WAGES.** For purposes of ss. 71.05 (6) (b) 47. a., 71.28 (9s) (a) 2., and 71.47 (9s) (a) 2., Stats., the determination as to whether at least \$200,000 of wages paid to the workforce of a business has moved to this state during a taxable year shall be made using the total amount of wages paid by the business during the taxable year to employees of the business who are residents of this state.

**Example:** During the taxable year in which Business B begins doing business in Wisconsin, Business B pays \$250,000 of wages to employees of Business B who are residents of Wisconsin. Wages of \$250,000 paid to the workforce of Business B moved to Wisconsin during the taxable year.

**(7) LIMITATION ON DEDUCTION.** No modification may be made under s. 71.05 (6) (b) 47. am., b., or c., Stats., if the amount otherwise eligible for the modification is less than zero.

**Example:** Partner B determines the amount otherwise eligible for the modification under s. 71.05 (6) (b) 47. b., Stats., is a loss of \$5,000. Partner B may not make a modification under s. 71.05 (6) (b) 47. b., Stats.

### Notice of Hearing Revenue EmR1105, CR 11-024

NOTICE IS HEREBY GIVEN that, pursuant to sections 71.05 (6) (b) 47m., 71.26 (1) (h), and 71.45 (1) (c), Stats., the Department of Revenue will hold a public hearing to consider emergency rules and permanent rules creating section Tax 3.05, relating to income and franchise tax deductions for job creation.

#### Hearing Information

The hearing will be held:

<u>Date and Time</u>	<u>Location</u>
<b>June 14, 2011</b> Tuesday at 1:00 P.M.	Events Room State Revenue Building 2135 Rimrock Road Madison, WI 53713

Handicap access is available at the hearing location.

#### Appearances at the Hearing and Submittal of Written Comments

Interested persons are invited to appear at the hearing and may make an oral presentation. It is requested that written comments reflecting the oral presentation be given to the department at the hearing. Written comments may also be submitted to the contact person listed below no later than **June 21, 2011**, and will be given the same consideration as testimony presented at the hearing.

Dale Kleven  
Department of Revenue  
Mail Stop 6-40  
2135 Rimrock Road  
P.O. Box 8933  
Madison, WI 53708-8933  
Telephone: (608) 266-8253  
E-mail: [dale.kleven@revenue.wi.gov](mailto:dale.kleven@revenue.wi.gov)

#### Analysis Prepared by the Department of Revenue *Statute(s) interpreted*

Sections 71.05 (6) (b) 47m., 71.26 (1) (h), and 71.45 (1) (c), Stats.

**Statutory authority**

Sections 71.05 (6) (b) 47m., 71.26 (1) (h), 71.45 (1) (c), Stats.

**Explanation of agency authority**

Sections 71.05 (6) (b) 47m., 71.26 (1) (h), and 71.45 (1) (c), Stats., require the department to promulgate rules to administer the job creation income and franchise tax deductions created by 2011 Wisconsin Act 5.

**Related statute or rule**

There are no other applicable statutes or rules.

**Plain language analysis**

This proposed rule clarifies certain terms as they apply to the job creation deduction under ss. 71.05 (6) (b) 47m., 71.26 (1) (h), and 71.45 (1) (c), Stats., prescribes the methods by which the average employee count is computed for purposes of determining the amount of the deduction, and clarifies how the deduction applies to partnerships, limited liability companies, tax-option corporations, and professional employer organizations.

**Summary of, and comparison with, existing or proposed federal regulation**

There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule.

**Comparison with similar rules in adjacent states**

The department has researched provisions in adjacent states and is not aware of the existence of a similar rule.

**Summary of factual data and analytical methodologies**

2011 Wisconsin Act 5 created income and franchise tax deductions for job creation. Among the provisions created is a requirement for the department to promulgate rules to administer these deductions. The department has created this proposed rule order to comply with this statutory requirement.

**Analysis and supporting documents used to determine effect on small business**

As explained above, this proposed rule is created to administer changes in Wisconsin's income and franchise tax laws. As the rule itself does not impose any significant financial or other compliance burden, the department has determined that it does not have a significant effect on small business.

**Effect on Small Business**

This proposed rule does not have a significant effect on small business.

**Fiscal Estimate****Assumptions used in arriving at fiscal estimate**

The proposed rule order does all of the following:

1) Clarifies certain terms as they apply to the job creation deduction under ss. 71.05 (6) (b) 47., 71.26 (1) (h), and 71.45 (1) (c), Stats., as created by 2011 Wisconsin Act 5.

2) Prescribes the methods by which the average employee count is computed for purposes of determining the amount of the deduction.

3) Clarifies how the deduction applies to partnerships, limited liability companies, tax-option corporations, and professional employer organizations.

The fiscal effect of the job creation deduction was included in the fiscal estimate for 2011 Act 5. As such, the proposed rule has no fiscal effect.

**State fiscal effect**

No state fiscal effect.

**Local government fiscal effect**

No local government costs.

**Anticipated costs incurred by private sector**

This proposed rule does not have a significant fiscal effect on the private sector.

**Agency Contact Person**

Please contact Dale Kleven at (608) 266-8253 or [dale.kleven@revenue.wi.gov](mailto:dale.kleven@revenue.wi.gov), if you have any questions regarding this proposed rule.

**Text of Rule**

**SECTION 1.** Tax 3.05 is created to read:

**Tax 3.05 Job creation deduction. (1) PURPOSE.** The purpose of this section is to clarify certain terms as they apply to the job creation deduction under ss. 71.05 (6) (b) 47m., 71.26 (1) (h), and 71.45 (1) (c), Stats.; define "employee," "full-time equivalent employee," and "gross receipts"; prescribe the methods by which the average employee count is computed for purposes of determining the amount of the deduction; and clarify how the deduction applies to partnerships, limited liability companies, tax-option corporations, and professional employer organizations.

**(2) DEFINITIONS.** In this section and in ss. 71.05 (6) (b) 47m., 71.26 (1) (h), and 71.45 (1) (c), Stats.:

(a) "Commonly controlled group" has the meaning given in s. 71.255 (1) (c), Stats.

(b) "Employee" has the meaning given in section 3121 (d) of the Internal Revenue Code.

(c) "Full-time equivalent employee" means an employee who is a resident of this state, is employed in a regular, nonseasonal job, and who, as a condition of employment, is required to work at least 2,080 hours per year, including paid leave and holidays.

(d) "Gross receipts" means gross sales, gross premiums earned, gross dividends, gross interest income, gross rents, gross royalties, the gross sales price from the disposition of capital assets and business assets, gross income from pass-through entities, and all other receipts that are included in gross income, other than life insurance income, before apportionment for Wisconsin franchise or income tax purposes.

(e) "Person" has the meaning given in ss. 71.01 (9), 71.22 (9), and 71.42 (4), Stats.

(f) "Related entity" has the meaning given in ss. 71.01 (9am), 71.22 (9am), and 71.42 (4m), Stats.

(g) "Taxable year" has the meaning given in ss. 71.01 (12), 71.22 (10), and 71.42 (5), Stats.

**(3) AMOUNT OF DEDUCTION.** Sections 71.05 (6) (b) 47m., 71.26 (1) (h), and 71.45 (1) (c), Stats., provide for an income and franchise tax deduction in an amount equal to the increase in the number of full-time equivalent employees employed by the taxpayer in this state during the taxable year, multiplied by \$4,000 for a business with gross receipts of no greater than \$5,000,000 in the taxable year or \$2,000 for a business with gross receipts greater than \$5,000,000 in the taxable year.

**(4) AVERAGE EMPLOYEE COUNT.** The average employee count for purposes of determining the increase in the number

of full-time equivalent employees employed by the taxpayer in this state for a taxable year shall be computed using one of the following methods:

(a) 1. Except as provided in subd. 2., for a taxable year during which the taxpayer is required, under ch. 108, Stats., to file quarterly unemployment insurance wage reports with the department of workforce development, the average employee count shall be computed using the average number of full-time equivalent employees employed by the taxpayer in this state from the claimant's quarterly wage reports required to be filed during the taxable year. An amount computed under this subdivision shall be rounded to the nearest whole number.

**Example:** For Taxpayer A's taxable year beginning August 1, 2011 and ending July 31, 2012, Taxpayer A uses the number of full-time equivalent (FTE) employees employed in Wisconsin from the quarterly wage reports required to be filed October 31, 2011, January 31, 2012, April 30, 2012, and July 31, 2012 to compute the average employee count. The information from the reports filed is as follows:

Report Due Date	Total Employees Reported	FTE Employees
October 31, 2011	43	22
January 31, 2012	58	36
April 30, 2012	57	39
July 31, 2012	<u>71</u>	<u>63</u>
TOTAL	229	160

The average employee count in this example is 40, the sum of the full-time equivalent employees employed in Wisconsin reported (160) divided by the number of reports filed (4).

2. If only one quarterly wage report is required to be filed during the taxable year, the average employee count shall be the number of full-time equivalent employees employed by the taxpayer in this state from that report.

3. For purposes of computing the average employee count under this paragraph, the number of full-time equivalent employees employed in this state does not include any employee who worked for a related person or related entity of the taxpayer or member of the same commonly controlled group as the taxpayer at any time during the 12 months prior to the due date of the quarterly wage report from which the number is derived.

(b) 1. Except as provided in subds. 2. and 3., for a taxable year during which a taxpayer is not required under ch. 108, Stats., to file quarterly unemployment insurance wage reports with the department of workforce development, the average employee count shall be computed using the average number of full-time equivalent employees employed by the taxpayer in this state on January 31, April 30, July 31, and October 31 within the taxable year. A January 31, April 30, July 31, or October 31 that does not occur within the taxable year is disregarded for purposes of the computation under this subdivision. An amount computed under this subdivision shall be rounded to the nearest whole number.

**Example 1)** For Taxpayer B's taxable year beginning July 1, 2011, and ending June 30, 2012, the number of full-time equivalent employees employed by Taxpayer B in this state on July 31, 2011, October 31, 2011, January 31, 2012, and

April 30, 2012, are used to compute the average employee count.

**Example 2)** To compute the average employee count for Taxpayer C's short-period taxable year beginning March 15, 2011, and ending December 31, 2011, Taxpayer C divides the sum of the number of full-time equivalent employees employed by Taxpayer C in this state on April 30, 2011, July 31, 2011, and October 31, 2011, by three.

2. If only one of the dates, January 31, April 30, July 31, and October 31 occur within a taxable year, the average employee count shall be the number of full-time equivalent employees employed by the taxpayer in this state on that date.

3. If none of the dates January 31, April 30, July 31, or October 31, occurs within a taxable year, the average employee count shall be the number of full-time equivalent employees employed by the taxpayer in this state on the last day of the taxable year.

4. For purposes of computing the average employee count under this paragraph, the number of full-time equivalent employees employed in this state does not include any employee who worked for a related person or related entity of the taxpayer or member of the same commonly controlled group as the taxpayer at any time during the 12 months prior to the date on which the number is derived.

(5) PARTNERSHIPS, LIMITED LIABILITY COMPANIES, AND TAX-OPTION CORPORATIONS. Partnerships, limited liability companies, and tax-option corporations may not claim the job creation deduction under ss. 71.05 (6) (b) 47m., 71.26 (1) (h), or 71.45 (1) (c), Stats., but the eligibility for, and the amount of, the deduction shall be based on the increase in the number of full-time equivalent employees employed by the partnership, limited liability company, or tax-option corporation in this state and the gross receipts of the partnership, limited liability company, or tax-option corporation. A partnership, limited liability company, or tax-option corporation shall compute the amount of deduction that each of its partners, members, or shareholders may claim and shall provide that information to each of them.

**Example:** Partnership C has two equal partners, Individual D and Individual E. Individual D and Individual E are both Wisconsin residents. For its 2011 taxable year, Partnership C computes \$450,000 of ordinary business income for federal income tax purposes and a job creation deduction of \$40,000. Partnership C reports the following amounts to both Individual D and Individual E:

	Ordinary business income
Federal Amount	225,000
Adjustment	(20,000)
Wisconsin Amount	205,000

(6) PROFESSIONAL EMPLOYER ORGANIZATIONS. The provisions of s. 461.04 (4) (b), Stats., apply to this section and ss. 71.05 (6) (b) 47m., 71.26 (1) (h), and 71.45 (1) (c), Stats.

**Example:** Company F, a professional employer organization, hires Employee G to perform services in Wisconsin for Taxpayer H, a client of Company F. For purposes of determining the job creation deduction, Employee G is considered to be an employee solely of Taxpayer H.

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# Submittal of Proposed Rules to the Legislature

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*Please check the Bulletin of Proceedings — Administrative Rules for further information on a particular rule.*

**Children and Families**  
*Safety and Permanence, Chs. DCF 35–59*  
**CR 10–148**

Repeals Chapter DCF 38 and revises Chapter DCF 56, relating to foster care.

**Natural Resources**  
*Fish, Game, etc., Chs. NR 1—*  
**CR 11–008**

(DNR # FH–50–10)

Revises Chapter NR 25, relating to the use and marking of commercial fishing trap nets in Lake Michigan and Lake Superior.

**Natural Resources**  
*Environmental Protection — Water Supply,*  
*Chs. NR 800—*  
**CR 10–109**

(DNR # DG–34–10)

Creates Chapter NR 860, relating to the process and procedures for the water use permit program in the Great Lakes basin.

**Public Service Commission**  
**CR 10–143**

(PSC # 1–AC–235)

Revises Chapter PSC 168, relating to the certification and operation of alternative telecommunications utility resellers.

**Regulation and Licensing —**  
**Barbering and Cosmetology Examining Board**  
**CR 11–011**

Revises Chapters BC 9 and 11, relating to license renewal and continuing education.

**Regulation and Licensing —**  
**Chiropractic Examining Board**  
**CR 11–019**

Revises Chapter Chir 5, relating to continuing education requirements for chiropractic radiological technicians and chiropractic technicians and to update provisions related to continuing education for chiropractors.

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## Rule Orders Filed with the Legislative Reference Bureau

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*The following administrative rule orders have been filed with the Legislative Reference Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication date of these rules could be changed. Contact the Legislative Reference Bureau at [bruce.hoesly@legis.wisconsin.gov](mailto:bruce.hoesly@legis.wisconsin.gov) or (608) 266-7590 for updated information on the effective dates for the listed rule orders.*

### **Agriculture, Trade and Consumer Protection** **CR 10-107**

(ATCP # 10-R-7)

Revises Chapter ATCP 20, relating to seed labeling and sales.  
Effective 7-1-11.

### **Insurance** **CR 10-149**

Revises section Ins 3.37 and creates section 3.375, relating to health in insurance coverage of nervous and mental disorders and substance use disorders.  
Effective 7-1-11.

### **Commerce** ***Moveable Soccer Goals, Ch. Comm 9*** **CR 11-003**

Revises Chapter Comm 9, relating to anchoring and securing of movable soccer goals.  
Effective 7-1-11.

### **Insurance** **CR 10-150**

Creates section Ins 3.35, relating to colorectal cancer screening.  
Effective 7-1-11.

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## Rules Published with this Register and Final Regulatory Flexibility Analyses

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*The following administrative rule orders have been adopted and published in this edition of the Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.*

*For subscription information, contact Document Sales at (608) 266-3358.*

### **Agriculture, Trade and Consumer Protection**

#### **CR 10-100**

(ATCP # 09-R-19)

Revises Chapter ATCP 16, relating to dog sellers and dog facilities. Effective 6-1-11.

#### **Summary of Final Regulatory Flexibility Analysis**

This rule will affect persons who operate “animal control facilities,” “animal shelters” or “dog breeding facilities” in this state. It will also affect persons who operate as “dog breeders,” “dog dealers” or “out-of-state dog dealers” in this state. Under 2009 Wis. Act 90, those persons must be annually licensed and must pay annual license fees as provided in this rule (see above). This rule does not, by itself, increase license requirements or fees (beyond the licensing requirements and fees already created by Act 90).

This rule spells out licensing standards for persons who are required to be licensed under this rule, including standards for the care, transportation and sale of dogs. Many of the persons who are subject to licensing under this rule are already meeting the standards under this rule, but others will incur costs to bring their facilities and practices into compliance with this rule.

Under Act 90 and this rule, whenever a license holder sells a dog in this state, the dog must be accompanied by a certificate of veterinary inspection (health certificate). The certificate must be issued by a Wisconsin certified veterinarian, on an official form provided by DATCP. The certificate forms cost only \$0.60 each (an estimated \$44,000 for sellers statewide), but there will be a significant cost for veterinarian services. This could have a significant financial impact on license holders, especially small dog breeders. However, this rule does not add any costs beyond those imposed by Act 90 itself.

The facility requirements in this rule are, for the most part, rudimentary. However, some license holders may need to make significant facility upgrades in order to comply with the standards in this rule and ensure a humane level of care.

This rule requires license holders to keep inventory, identification and health records related to dogs that they keep or sell. Many of the persons affected by this rule already keep such records, but others do not. This rule may impose additional recordkeeping costs on those who do not. Many of the recordkeeping requirements in this rule are also contained (in more general form) in Act 90, so this rule does not add significantly to the costs already imposed by Act 90.

This rule may require some dog sellers to hire additional staff, or hire professional services (especially veterinarian services) to comply with this rule and provide a humane level of care to dogs under their custody or control.

This rule will benefit the dog care and sales industry by establishing basic standards of humane care and fair competition. This rule will also benefit dog buyers by providing greater assurance that dogs are healthy and well-adjusted, and have been humanely treated.

Many of the persons affected by this rule are “small businesses.” This rule, like Act 90, exempts animal shelters that keep no more than 25 dogs per year. It also exempts dog breeders and dog dealers who sell no more than 25 dogs a year from no more than 3 litters. But neither Act 90 nor this rule make other significant exemptions for “small business,” because many of the most serious animal health and humane problems addressed by Act 90 are found in “small business” settings.

The standards in this rule give affected businesses some flexibility and choices, consistent with the basic requirement of humane care. DATCP may issue licenses on a conditional basis, giving some license holders additional time to bring their operations into full compliance. DATCP may also grant variances for good cause, if the variance does not undermine the purpose of the standard from which the variance is granted.

#### **Summary of Comments by Legislative Review Committees**

On January 3, 2011, DATCP transmitted the above rule for legislative committee review. The rule was assigned to the Senate Committee on Agriculture, Forestry, and Higher Education and to the Assembly Committee on Consumer Protection Personal Privacy. Neither the Senate committee nor the Assembly committee held a hearing or took any action on the rule.

### **Commerce**

#### **Financial Resources for Businesses and Communities, Chs. Comm 100-149**

#### **CR 10-044**

Creates Chapter Comm 124, relating to the Forward Innovation Fund. Effective 6-1-11.

#### **Summary of Final Regulatory Flexibility Analysis**

Less stringent application requirements are not proposed for small-business applicants because the application process has been simplified so as to not impose unnecessary administrative burdens or other impediments on any business that applies for a corresponding grant or loan.

Although several public-Hearing comments recommended expanding the draft rules to specifically refer to helping woman-owned businesses, the rules were not changed in response because adding any targeting language beyond what is included would have the potential of limiting the flexibility of the Forward Innovation Fund (FIF); thus

potentially limiting the Department's ability to award FIF monies across a broad spectrum as intended under subchapter II of chapter 560 of the Statutes.

The rules are not expected to impose significant costs on small businesses because the rules address submittal of documentation, and other activities, only by applicants that choose to pursue the grants or loans addressed in the rules.

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Commerce**

***Financial Resources for Businesses and Communities,  
Chs. Comm 100–149***

**CR 10–108**

Revises Chapter Comm 129, relating to tax credits for Angel Investments and Early Stage Seed Investments. Effective 6–1–11.

**Summary of Final Regulatory Flexibility Analysis**

Less stringent requirements are not proposed for small businesses because the directing legislation, section 560.205 of the Statutes, does not provide such flexibility.

The rule revisions are not expected to impose significant costs or other adverse impacts on small businesses because the rule revisions only address raising the yearly limits on tax credits for angel investments and for early stage seed investments, and transferring or selling tax credits for early stage seed investments.

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Commerce**

***Financial Resources for Businesses and Communities,  
Chs. Comm 100–149***

**CR 10–113**

Creates Chapter Comm 139, relating to rural outsourcing grants. Effective 6–1–11.

**Summary of Final Regulatory Flexibility Analysis**

Less stringent application requirements are not proposed for small-business applicants because uniform application criteria are expected to result in maximizing the fairness and effectiveness of the allocation of the grants.

The reporting that would be required for businesses which choose to participate in this grant program is essentially the same as the Department currently requires in conjunction with administering other economic development grants – and therefore is not expected to impose any significant new costs on small businesses.

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Commerce**

***Financial Resources for Businesses and Communities,  
Chs. Comm 100–149***

**CR 10–116**

Revises Chapter Comm 133, relating to film production accreditation program. Effective 6–1–11.

**Summary of Final Regulatory Flexibility Analysis**

Less stringent application requirements are not included for small-business applicants because the directive under which these rules are adopted, in section 560.206 of the Statutes, does not provide such flexibility.

Applicants will need to newly submit verification of (1) purchasing corresponding tangible personal property and other items, property, and goods from Wisconsin-based sources; and (2) spending at least 35 percent of the total budget for an accredited production, in Wisconsin.

The rules are not expected to impose significant costs on small businesses because the rules address submittal of documentation, and other activities, only by applicants that choose to pursue the tax credits.

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Commerce**

***Financial Resources for Businesses and Communities,  
Chs. Comm 100–149***

**CR 10–117**

Creates Chapter Comm 135, relating to investment tax credits for food processing plants and food warehouses. Effective 6–1–11.

**Summary of Final Regulatory Flexibility Analysis**

Less stringent application requirements are not proposed for small-business applicants because uniform application criteria are expected to result in maximizing the fairness and effectiveness of the allocation of the tax credits.

The rules are not expected to impose significant costs on small businesses because the rules address submittal of documentation, and other activities, only by applicants that choose to pursue tax credits for modernization or expansion of food processing plants and food warehouses.

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Financial Institutions — Banking**

**CR 10–098**

Creates Chapter DFI–Bkg 75, relating to payday lending. Effective 6–1–11.

**Summary of Final Regulatory Flexibility Analysis**

This proposed rule will have no adverse impact on small businesses.

**Summary of Comments by Legislative Review Committees**

No written comments were received.

## Health Services

### *Community Services, Chs. DHS 30—*

#### CR 10–145

Revises Chapter DHS 88, relating to resource center referrals by licensed adult family homes. Effective 6–1–11.

#### **Summary of Final Regulatory Flexibility Analysis**

This rule will not have a fiscal effect on businesses.

#### **Summary of Comments by Legislative Review Committees**

No written comments were received.

## Health Services

### *Management and Technology and Strategic Finance, Chs. DHS 1—*

#### CR 10–146

Revises Chapter DHS 1, relating to records status and retention period for records of clients who have unpaid liability to the Department or counties. Effective 6–1–11.

#### **Summary of Final Regulatory Flexibility Analysis**

The rules do not effect businesses.

#### **Summary of Comments by Legislative Review Committees**

No written comments were received.

## Natural Resources

### *Fish, Game, etc., Chs. NR 1—*

#### CR 10–118

(DNR # PR–36–10)

Revises Chapters NR 1 and 45, relating to management of lands for the Ice Age and North Country Trails. Effective 6–1–11.

#### **Summary of Final Regulatory Flexibility Analysis**

These rules are applicable only to certain designated lands owned by the department and impose no compliance or reporting requirements and will not have a significant economic impact on small businesses. Therefore, under s. 227.19 (3m), Stats., a final regulatory flexibility analysis is not required.

#### **Summary of Comments by Legislative Review Committees**

No written comments were reported.

## Natural Resources

### *Fish, Game, etc., Chs. NR 1—*

#### CR 10–114

(DNR # ER–35–10)

Revises Chapter NR 27, relating to adding cave bats to Wisconsin's threatened species list. Effective 6–1–11.

#### **Summary of Final Regulatory Flexibility Analysis**

Affected constituencies include commercial caves and mines, private cave and mine owners, recreational cavers, wildlife rehabilitators, animal control operators, agricultural and forestry industries, the conservation community, wind utilities, WI Department of Transportation (WDOT) and homeowners. Many of the concerns of these groups will be addressed through a broad incidental take permit/authorization and voluntary agreements so that the

listing does not have a significant economic impact on a substantial number of small businesses.

A broad incidental take permit/authorization has been issued, as provided for under s. 29.604, Wis. Stats. The broad incidental take permit/authorization will allow for the incidental taking of state listed cave bats that may occur as a result of specific public health concerns, bat removals, building demolitions, forestry activities, bridge demolitions, miscellaneous building repairs and wind energy development projects (see the “Broad Incidental Take Permit/Authorization for Cave Bats Conservation Plan” for more information). Some take of bats may still occur as a result of these activities, however take will be minimized by following specific minimization measures. The department has concluded that the projects covered under this permit/authorization are not likely to jeopardize the continued existence and recovery of the state population of these bats or the whole plant–animal community of which they are a part; and has benefit to the public health, safety or welfare that justifies the action. This incidental take permit/authorization is only needed when a bat is present or suspected to be present (e.g. Natural Heritage inventory report of bats in the area, evidence of bat presence).

#### **Summary of Comments by Legislative Review Committees**

No comments were reported.

## Natural Resources

### *Fish, Game, etc., Chs. NR 1—*

#### CR 10–123

(DNR # IS–47–10)

Revises Chapter NR 40, relating to white–nose syndrome management. Effective 6–1–11.

#### **Summary of Final Regulatory Flexibility Analysis**

The rule is not expected to have a significant adverse effect on a substantial number of small businesses. Therefore, under s. 227.19 (3m), Stats., a final regulatory flexibility analysis is not required. The rule may have favorable effects on a number of businesses by preventing the introduction or limiting the spread of WNS, thereby preserving the agricultural, economic and environmental benefits associated with healthy bat populations.

There are approximately 120 known bat hibernacula in Wisconsin, and approximately 12 of these are public caves. In addition, less than 20 of the caves and mines in Wisconsin are routinely caved.

Affected constituencies include commercial caves and mines, active underground mines, private cave and mine owners, recreational cavers, agriculture and forest industries, and conservation organizations. Concerns will likely include how the proposed rules will affect current activities. Many of these potential concerns may be addressed through cost–sharing, technical support, and education provided by the department. Examples include: cost–sharing for installation of bat–friendly gates or other physical barriers, cost–sharing for conservation actions, providing cave closure signage and cleaning protocols, and providing locations of caves that may be used for recreational caving activities (where bats are known to have been excluded). Agriculture industries, forest industries and conservation organizations would be negatively affected by not attempting to control or slow the spread of WNS.

The cost of cleaning equipment, gear, clothing and other objects will be minimal. The cost of caving gear typically

ranges from \$125–\$750. Very few sites in Wisconsin require vertical climbing gear. The cost of commercially cleaning gear according to department protocols typically ranges from \$10 to \$12 per set of gear. The cost of signage at caves and mines would be \$0 because the department will provide the signs.

Under Current ch. NR 40, the department may ask any person who owns, controls, or manages property where a prohibited species is present to control the prohibited species in accordance with a plan approved by the department. While a person who owns, controls, or manages property where a prohibited species is present is responsible for controlling the prohibited species that exists on the property, the department will seek funds to assist in the control of prohibited species.

The department will normally follow an informal, stepped enforcement process in order to obtain compliance with invasive species rules. This involves informal discussions between department staff and the individual, landowner or company, notifying the person of potential violations and providing guidance on how to comply with the rules. Notices of non-compliance may follow if necessary. If normal enforcement is necessary, ch. NR 40 will be enforced by department conservation wardens, county district attorneys, and circuit courts through the use of citations and civil or criminal complaints. Civil and criminal enforcement may also be carried out by department referral of violations to the Wisconsin Attorney General, with prosecution and abatement actions in the circuit courts. Criminal enforcement will be limited to intentional violations. Finally, violations of the permits issued under ch. NR 40 also may be enforced by administrative permit revocation proceedings.

#### **Summary of Comments by Legislative Review Committees**

No comments were reported.

### **Natural Resources**

#### ***Fish, Game, etc., Chs. NR 1—***

#### **CR 10–115**

(DNR # IS–41–10)

Revises Chapter NR 40, relating to the listing of the fungus that causes white–nose syndrome in bats as an invasive species. Effective 6–1–11.

#### **Summary of Final Regulatory Flexibility Analysis**

Affected constituencies include commercial caves and mines, private cave and mine owners, recreational cavers, property owners, the agricultural industry, and the conservation community. Concerns will likely include how listing the fungus will affect current activities. Many of these potential concerns may be addressed through cost–sharing, technical support, and education provided by the department. Examples include: reviewing proposed research proposals and issuance of invasive species permits, cost–sharing for installation of bat gates and other conservation actions, providing cave closure signage and decontamination protocols, and providing locations of caves that may be used for recreational caving activities (where bats are known to have been excluded).

Under ch. NR 40, the department may ask any person who owns, controls, or manages property where a prohibited species is present to control the prohibited species in accordance with a plan approved by the department. While

a person who owns, controls or manages property where a prohibited species is present is responsible for controlling the prohibited species that exists on the property, the department will seek funds to assist in the control of prohibited species. Therefore, conducting control measures will not necessary result in a cost to commercial cave operators. Additionally, commercial caves will have the option to exclude bats from their cave(s) with the help of the department, allowing them to remain open for tourism, and resulting in no loss of tourism dollars.

Under s. 227.19 (3m), Wis. Stats., a final regulatory flexibility analysis is not required.

#### **Summary of Comments by Legislative Review Committees**

No comments were reported.

### **Public Instruction**

#### **CR 10–139**

Revises section PI 6.06, relating to public library system audit requirements. Effective 6–1–11.

#### **Summary of Final Regulatory Flexibility Analysis**

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

#### **Summary of Comments by Legislative Review Committees**

No comments were reported.

### **Public Instruction**

#### **CR 10–140**

Revises section PI 6.03, relating to public librarian certification. Effective 6–1–11.

#### **Summary of Final Regulatory Flexibility Analysis**

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

#### **Summary of Comments by Legislative Review Committees**

No comments were reported.

### **Transportation**

#### **CR 10–099**

Revises Chapter Trans 178, relating to the Unified Carrier Registration System. Effective 6–1–11.

#### **Summary of Final Regulatory Flexibility Analysis**

The fees charged under federal law, federal regulation, and Unified Carrier Registration Agreement will affect some small businesses by increasing the amount of annual registration fee. The new fee schedule increases all fees by just less than 96%. These fees are established under federal law at 49 CFR 367.20 but may be revised annually by publication in the federal register. If Wisconsin does not charge these fees, small businesses that operate affected trucks and trailers outside this state will nevertheless be required to pay these same fees to other states.

#### **Summary of Comments by Legislative Review Committees**

No comments were reported.

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## Sections Affected by Rule Revisions and Corrections

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The following administrative code sections had rule revisions and corrections take place in **May 2011**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Legislative Reference Bureau at (608) 266-7590.

### Revisions

#### Agriculture, Trade and Consumer Protection

##### Ch. ATCP 10

ATCP 10.06 (1) (b)

##### Ch. ATCP 16

(Entire Chapter)

#### Commerce

##### Ch. Comm 124

(Entire Chapter)

##### Ch. Comm 129

Comm 129.09 (6) to (11)

Comm 129.12 (6) (a)

Comm 129.125 (1) (intro.) to (d)

Comm 129.13 (2) (a)

Comm 129.13 (2) (a), (3) (a)

##### Ch. Comm 133

Comm 133.10 (1) (c)

Comm 133.20 (3)

Comm 133.32

Comm 133.34 (1) (a), (b), (c)

Comm 133.35 (1) to (10)

Comm 133.36 (title), (1) (b), (c), (e) to (g), (h), (i), (2) (b) (intro.), (c)

Comm 133.60 (3)

Comm 133.70 (1) (a), (2) (a), (b), (c), (3), (5) (a), (b)

Comm 133.90 (2) (a), (b), (c)

##### Ch. Comm 135

(Entire Chapter)

##### Ch. Comm 139

Comm 139.10

Comm 139.20 (1), (2) (a), (b), (3) (a), (b)

Comm 139.30 (1), (2) (a), (b), (3) (a) to (f), (4), (5) (a), (b)

Comm 139.40

#### Financial Institutions–Banking

##### Ch. Bkg 75

(Entire Chapter)

#### Health Services

##### Ch. DHS 1

DHS 1.03 (20) (c)

DHS 1.06 (3) (d), (e)

##### Ch. DHS 88

DHS 88.06 (4)

#### Natural Resources

##### Ch. NR 1

1.29 (1), (2) (a), (b), (3) (a) to (d), (4), (5), (6) (a), (b)

##### Ch. NR 27

NR 27.03 (3) (a)

##### Ch. NR 40

NR 40.02 (7g), (7r), (25m), (46m)

NR 40.04 (2) (g), (3m)

NR 40.07 (8)

##### Ch. NR 45

45.10 (1) (a), (m), (n)

#### Public Instruction

##### Ch. PI 6

PI 6.03 (3) (b), (c), (5) (a), (6) (b), (c)

PI 6.06 (4) (d), (e), (f)

#### Transportation

##### Ch. Trans 178

Trans 178.02 (2)

Trans 178.03 (1)

Trans 178.04 (1) (a)

### Editorial Corrections

Corrections to code sections under the authority of s. 13.92 (4) (b), Stats., are indicated in the following listing.

#### Agriculture, Trade and Consumer Protection

##### Ch. ATCP 10

ATCP 10.03 (4)

ATCP 10.66 (2) (a)

##### Ch. ATCP 16

ATCP 16.14 (2)

ATCP 16.22 (8)

ATCP 16.24 (8) (c)

ATCP 16.26 (2) (d)  
ATCP 16.28 (1), (2), (3), (4), (5)

**Health Services**

**Ch. DHS 88**  
DHS 88.05 (3) (d)  
**Ch. DHS 129**  
DHS 129.08 (2) (g)

**Natural Resources**

**Ch. NR 1**  
NR 1.29 (6), (7)  
**Ch. NR 13**  
NR 13.04 (1) (a) 50., 54., (b) 2., (4) (a) 12.  
NR 13.30 (1) (u), (v), (2) (c), (j) 5.

**Ch. NR 45**  
45.10 (1) (a)  
**Ch. NR 48**  
NR 48.02 (3), (4), (6)  
**Ch. NR 204**  
NR 204.04 (2), (3) (a), (b), (c)  
**Ch. NR 206**  
NR 206.02 (2) (e)  
**Ch. NR 211**  
NR 211.10 (2) (a)  
NR 211.17 (1) (a), (b), (8)  
**Ch. NR 212**  
NR 212.01  
**Ch. NR 216**  
NR 216.42 (4)  
**Ch. NR 420**  
NR 420.03 (5) (c)

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## Executive Orders

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**The following are recent Executive Orders issued by the Governor.**

**Executive Order 25.** Relating to a Special Session of the Legislature and Amending Executive Orders #1, #4, and #14.

**Executive Order 26.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for Sergeant Paul J. Atim of the United States Army Who Lost His Life While Serving His Country During Operation Enduring Freedom – Afghanistan.

**Executive Order 27.** Relating to Issuance of General Obligation Bonds for the Veterans Home Loan Program and Appointment of Hearing Officer.

**Executive Order 28.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for Staff Sergeant Matthew D. Hermanson of the United States Army Who Lost His Life While Serving His Country During Operation Enduring Freedom – Afghanistan.

**Executive Order 29.** Relating to the Creation of the Governor's Judicial Selection Advisory Committee.

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